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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,844	12/22/2003	Debra N. Welchel	20193	9083

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EXAMINER

BOLLINGER, DAVID H

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,844

Applicant(s)

WELCHEL ET AL.

Examiner

David H. Bollinger

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-15, 17-27 and 29-33 is/are rejected.
- 7) ☒ Claim(s) 4, 16 and 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/3/05, 2/4/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3653

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2, 3, 5, 6, 12, 14, 15, 17, 18, 22 and 24 through 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2 lines 1-2, claim 14 lines 1-2 and claim 26 lines 1-2, the recitation "the housing includes a paperboard" does not make sense. It appears an element is missing (i.e. a paperboard what?). Is the housing constructed of paperboard?

In claims 3, 15 and 27, it is not clearly understood how the recited "polymer film" is related to the various other elements of the dispenser.

In claim 5, 17 and 29, the use of the terminology "configured" is indefinite because it is unclear what structure is defined in order to permit the housing to be disposed at an oblique angle, therefore; the structure encompassed by the claim is unclear.

In claim 6, 18 and 30, the use of the terminology "configured" is indefinite because it is unclear what structure is defined in order to permit the housing to be disposed substantially parallel to a vertical support surface, therefore; the structure encompassed by the claim is unclear.

Claims 10 and 22 is indefinite because it is not understood how the sheets include dry sheets and premoistened sheets since the claim defines only a single compartment. It appears the claimed housing can only contain one or the other type of sheet and has been treated as such.

Art Unit: 3653

In claim 12, 24 and 33 it is not clearly understood how the recited "cellophane" is related to the various other elements of the dispenser. Is the housing constructed of cellophane?

In claim 25 lines 4-5, it is unclear how the housing contains both dry sheets and premoistened sheets since the claim recites only a single compartment for the housing. It appears the housing as claimed in claim 25 can only contain one or the other type of sheets and has been treated as such.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 7 through 10, 13 through 15, 19 through 22, 25 through 27, 30 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Sauer et al '626.

The applied reference has a common inventor with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Sauer et al '626 discloses a non-refillable dispenser for dispensing from a tabletop and convertible to dispensing from a conventional rolled product fixture (see abstract). Further, the dispenser includes connecting means (perforations 80) formed in the housing of the dispenser at two spaced apart areas (on opposite side walls) to provide a pair of spaced apart openings to permit the housing to be coupled to the rolled product fixture. The connecting means being masked as a portion of the housing and being easily unmasked when the perforations are opened. The housing includes paperboard (see column 2 lines 61-62) and a polymer film (see column 4 lines 1-5).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 11, 23 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer et al '626 in view of Ponsi et al.

Art Unit: 3653

Sauer et al '626 as interpreted above in paragraph 4 discloses everything except the housing including a resealable cover.

Ponsi et al teaches providing a dispenser with a resealable cover 24 (see column 3 lines 1-14) for the dispensing opening.

It would have been obvious to one of ordinary skill in the art provide the dispenser of Sauer et al '626 with a resealable cover of the dispensing opening as taught by Ponsi et al. This would provide additional protection from contamination for articles contained in the housing.

8. Claims 12, 24 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer et al '626 in view of Medoff.

Sauer et al '626 as interpreted above in paragraph 4 discloses everything except the housing includes cellophane.

Medoff teaches a housing for a tissue dispenser including cellophane (see page 1 lines 90-97 and Figures 1 and 2).

It would have been obvious to one of ordinary skill in the art to provide the housing of Sauer et al '626 to include cellophane in view of the teachings of Medoff.

9. Claims 5, 17 and 29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Art Unit: 3653

10. Claims 4, 16 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Applicant's arguments with respect to claims 1 through 33 have been considered but are moot in view of the new ground(s) of rejection.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H. Bollinger whose telephone number is 571-272-6935. The examiner can normally be reached on Monday through Friday from 9:00 am to 5:00 pm.

Art Unit: 3653

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh, can be reached on 517-272-6944. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David H. Bollinger
Primary Examiner 7/21/05
Art Unit 3653